

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORMAN ALAN KERR,)
)
)
Petitioner,) 1:24CV752
) 1:09CR290-1
v.)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner convicted in this Court, submitted a document entitled “Motion to Change Venue” [Doc. #272]. Having previously failed to successfully challenge his conviction and sentence using 28 U.S.C. § 2255 or other methods, and having also failed to secure permission from the United States Court of Appeals for the Fourth Circuit to file a successive § 2255, Petitioner made his current filing in an attempt to transfer his case to the district where he is housed so that he can attempt to attack his conviction and sentence in some manner there. He provides no valid reason for any such transfer. Failure to succeed in one district is not grounds for transfer to another district. In any event, attacks on a conviction or sentence are properly filed under § 2255 and must be filed in the district of conviction. Therefore, Petitioner’s request for a transfer should be denied.

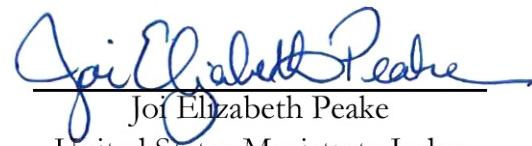
Further, because Plaintiff again seeks to attack the conviction or sentence he received in this Court, his filing was treated as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. However, as with Petitioner's past filings, the Motion cannot be further processed because Petitioner previously attacked the same conviction and sentence in a § 2255 motion (Case No. 1:14CV1094). Consequently, Petitioner must move in the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current Motion, as required by 28 U.S.C. § 2255 and 28 U.S.C. § 2244. Because of this pleading failure, this particular Motion should be filed and then dismissed.

IT IS THEREFORE RECOMMENDED that Petitioner's request for the transfer of his case be denied, that this action be treated as a filing under 28 U.S.C. § 2255, and that it be dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d) and that, there being no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability not issue.

IT IS THEREFORE ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this Court and Motions for Authorization in the Court of Appeals, and four copies of § 2255 motion forms (morecopies will be sent on request). Petitioner should keep the original and two copies

of the § 2255 motion which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 2nd day of December, 2024.



Jo Elizabeth Peake
United States Magistrate Judge